IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1837 OF 2007

Ashutosh Makarand Gokhale ...Petitioner
vs.
Jyoti Ashutosh Gokhale ...Respondent

Ms Seema Sarnaik for the Petitioner
Mr.J.Shekhar i/b M/s.J.Shekhar & Co. for the Respondent.

CORAM: A.S.OKA,J.
DATE : JUNE 27, 2007.

P.C.:

1. Notice for final disposal was already issued by this Court. The dispute is between the Petitioner-husband and the Respondent-wife. The Petitioner filed a petition for divorce against the Respondent on various grounds incorporated in the petition. The Respondent contested the said petition by filing a written statement. An application for amendment of the divorce petition was made by the Petitioner. An additional ground for divorce was sought to be incorporated in the Petition based on certain averments made in the written statement of the Respondent. It is sought to be contended by the proposed amendment that the allegations made by the Respondent in her written statement against the Petitioner are false, baseless and incorrect and the said allegations have caused mental cruelty and agony to the Petitioner. It is contended that this itself is a ground for granting a decree of divorce on the ground of cruelty. By the order impugned dated 3rd February 2007, the learned Judge rejected the said application.

2. I have heard the submissions of the learned Counsel for the Petitioner and the learned Counsel for the Respondent. The submission of the Advocate for the Petitioner is that the the learned Trial Judge could not have gone into the merits and demerits of the averments sought to be incorporated by the amendment. She submitted that the same ought to have been allowed so that the Respondent is put to notice that the Petitioner was seeking a decree of divorce on the basis of averments made in the written statement. The learned Counsel for the Respondent opposed the Petition by pointing out that the parties are yet to lead evidence and it is not yet established that the allegations made in the written statement are baseless and false.

3. I have considered the submissions. I have perused the petition for divorce filed by the Petitioner and the written statement filed by the Respondent. By the Application for amendment, the Petitioner wants to refer to the allegations made in the written statement in certain paragraphs. After referring to the said allegations, the Petitioner wants to incorporate the following portion in the Petition:

. "The Petitioner says that all these allegations of the respondent in her written statement are false, baseless, wild and defamatory which amounts to mental cruelty and agony to the petitioner and his family members. The respondent with egoistic view oppose this petition in fact the respondent know that all her allegations are

false and there cannot be happy and harmonious married life between them due to the respondent's problem. The Petitioner never demand oral sex and masturbation. This marriage is not consummated at all. Dr.Bahaduri is a friend of the respondent. The petitioner never went to her or any other Gynaecologist as there was a problem with the respondent. Hence, the respondent never demanded medical examination of the petitioner. Hence, all her allegations in the written statement are false and it amounts to the cruelty to the petitioner."

4. The Petitioner wants to add one more ground in the Petition seeking a divorce on the ground of cruelty. Whether the Petitioner is entitled to a decree of divorce only on the basis of averments made in the written statement is the question which is required to be decided after the parties lead evidence. The learned Judge has observed that in absence of evidence it cannot be said that the allegations in the written statement are incorrect or false. It is true that the issue of the correctness of the allegations made in the written statement will be decided after the parties lead evidence. However, it cannot be said that till the allegations are found to be false, the amendment cannot be allowed. In my view, this was a fit case for allowing the amendment. Mere grant of the amendment will not amount to proof what is stated in the text of the amendment regarding the falsity of the allegations made by the Respondent in her

written statement. These are the issues which are required to be decided at the time of trial.

5. Hence, I pass the following order :

i) Impugned order dated 3rd February 2007 is quashed and set aside.

ii) The Application made by the Petitioner at Exh.31 in Petition No.A 680/2005 is allowed. The Petitioner will carry out the amendment to his Petition within a period of two weeks from the date of receipt of writ of this order from this Court.

iii) It is obvious that the Respondent will be entitled to file additional written statement to the amended Petition.

iv) All contentions of the parties on merits of the matrimonial petition are expressly kept open.

v) Considering the present age of the parties and considering the nature of the dispute between the parties, the Family Court is directed to decide the pending Petition expeditiously.

vi) Rule is made absolute in above terms.

vii) Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE